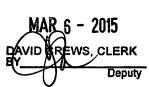


IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI ABERDEEN DIVISION



CALVIN CANNADY

PLAINTIFF

VERSUS

CIVIL ACTION NO: 1:15CV 44-GHD-JMV

CLAY COUNTY, MISSISSIPPI

DEFENDANT

JURY TRIAL DEMANDED

COMPLAINT

This is an action to recover actual damages for violation of substantive due process of law.

A supplemental state law claim is made for negligence in failing to bring Plaintiff properly before a judicial officer. The following facts support the action:

1.

Plaintiff, CALVIN CANNADY, is an adult resident citizen of 126 Dewitt St.,

Jackson, MS 39203.

2.

Defendant, CLAY COUNTY, MISSISSIPPI, is a political subdivision of the State of Mississippi, and takes official policy actions through its County Board of Supervisors and through its sheriff. It may be served with process upon its Chancery Clerk, Amy G. Berry, at 205 Court Street, West Point, Mississippi 39773. At all relevant times, Defendant acted under color of state law.

3.

This Court has federal question jurisdiction under 28 U.S.C. § 1331, civil rights jurisdiction under 28 U.S.C. § 1343. This Court has supplemental jurisdiction over Plaintiff's state law claims. This action is authorized by 42 U.S.C. § 1983.

4.

On approximately March 11, 2011, Donnell Garrett, who was suspected of various crimes by Clay County authorities, gave an unsubstantiated, uncorroborated report to a Clay County Detective, Jimmy Birchfield, claiming that Plaintiff had participated in a burglary in Clay County, Mississippi. This statement was not sufficient to show probable cause in view of the lack of corroboration of Garrett's statement, and in view of the dubious character of Garrett.

5.

Nevertheless, an affidavit was signed by Detective Birchfield for Plaintiff's arrest, resulting in his being incarcerated in the Clay County Jail for several months.

6.

On October 10, 2011, a Clay County Grand Jury, without probable cause and based solely upon statements that had been made by Garrett to detectives, returned an indictment against Plaintiff charging him with burglary.

7.

Because there was no substantial evidence against Plaintiff, bail was set for only \$5,000.00 by the sheriff. A circuit court judge reaffirmed that order of bail by order of July 9, 2012.

8.

Plaintiff made bail and was released from jail on approximately April 26, 2012.

9.

Thereafter, pursuant to an agreement under which Clay County, Mississippi pays for various court-appointed counsel, counsel was appointed to represent Plaintiff, but except for obtaining his signature on a waiver of arraignment, counsel did not inquire into his case.

10.

An order was entered setting the case for trial for October 10, 2012. Plaintiff was misinformed by law enforcement officers that his court-appointed counsel would take care of the matter, and Plaintiff, an uneducated person, erroneously assumed the matter was being taken care of because there was no evidence against him.

11.

Thereafter, on October 9, 2012, the day before the trial was set, an order was entered directing his arrest. The order directed the Sheriff of Clay County to have Plaintiff appear to court *instanter*. See Exhibit F to Notice of Claim, which is attached hereto as Exhibit "1."

12.

Despite the order the Plaintiff was to be brought before the court *instanter*, Clay County, Mississippi authorities failed and refused to bring Plaintiff before the court *instanter*, and no inquiry was ever made of the court as to the circumstances as to why no inquiry was made, and there was no opportunity given to Plaintiff to explain his situation or to show that there were circumstances which justified his failure to appear or that bail should be set or that, otherwise, trial should be reasonably held. Plaintiff wrote letters to the circuit court judge, circuit clerk, to the sheriff and to members of the Board of Supervisors of Clay County maintaining his innocence and demanding a speedy trial.

13.

Finally, on October 14, 2013, after Plaintiff had been in jail for one year, an order of *Nolle Prosse* was entered. The State made the false statement that it was unable to obtain a material witness, Garrett, as being the reason for the *Nolle Prosse*. See Exhibit G to Notice of Claim. In fact, Garrett was in the Clay County Jail at the time, and the reason was false.

14.

The real reason Plaintiff was not tried was there was no evidence against him.

15.

Through official decisions of the Sheriff and Board of Supervisors of Clay County, Mississippi, or non-action by the Sheriff and Board of Supervisors of Clay County, Mississippi, Plaintiff's request to be brought before the judge *instanter*, as the judge had specifically directed and a result thereof, Plaintiff was incarcerated for a period of one year, from October 30, 2012 through October 14, 2013.

16.

Additionally, a failure to obey a court order directing that a prisoner be brought before the judge *instanter* constitutes unlawful conduct and negligence under Mississippi law.

17.

Plaintiff's rights have been violated in the following respects: Plaintiff has been denied his United States Constitution Amendment Fourteen right to a fair and impartial due process hearing through officials ignoring Plaintiff's request to be brought before a judge. To cause one to be incarcerated for a year without giving him any notice of hearing or hearing as to why he should not be released prior to trial, constitutes a denial of "liberty" without due process in violation of the

Fourteenth Amendment. Additionally, failure to ignore Plaintiff's many requests to be brought for a trial constitutes negligence under Mississippi law.

18.

Plaintiff timely filed a Notice of Claim, attached hereto as Exhibit "A," and the requisite waiting period has expired.

19.

Plaintiff has suffered mental anxiety and stress as a result of Defendant's actions.

REQUEST FOR RELIEF

Plaintiff requests actual damages in an amount to be determined by a jury both for violations of federal due process and violations of state law.

This the 16 day of February, 2015

Respectfully submitted,

CALVIN CANNADY, PRO SE

BEFORE THE BOARD OF SUPERVISORS OF CLAY COUNTY, MISSISSIPPI AND THE SHERIFF'S DEPARTMENT OF CLAY COUNTY, MISSISSIPPI

NOTICE OF CLAIM OF CALVIN CANNADY

NOTICE IS HEREBY GIVEN of a claim for damages for Calvin Cannady (hereinafter "Cannady") pursuant to Miss. Code. Ann. § 11-46-11.

NATURE OF THE CLAIM

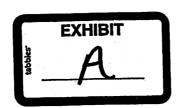
This is a claim for damages for wrongful imprisonment extending from October 30, 2012 through and including October 14, 2013.

STATEMENT OF THE FACTS AND CIRCUMSTANCES WHICH CAUSED THE INJURY

On approximately March 11, 2011, Donnell Garrett, who was suspected of various crimes by Clay County authorities, including a burglary of a building in West Point, Mississippi, gave false, malicious statements to a Clay County Detective, Jimmy Birchfield, claiming that Cannady has participated in a burglary. Garrett could have given these statements out of vindictiveness, or out of hopes that somehow such statements would assist him in the defense of various charges against him. Garrett falsely told Birchfield that Cannady had been involved in a burglary in West Point, Mississippi.

Based solely upon the false statement of Garrett, Birchfield signed an affidavit, charging Cannady with burglary and larceny of business, a copy of which is attached hereto as Exhibit "A." The affidavit was presented to a justice court judge who issued a warrant upon it, resulting in Cannady being incarcerated for several months, but no prosecution ever being pursued.

No probable cause hearing was ever held, meaning this arrest was arbitrary in violation of



13876.1

the Fourteenth Amendment to the United States Constitution and the due process clause of the United States Constitution. Nevertheless, the charges against Cannady were presented to a Clay County Grand Jury which returned an indictment on October 10, 2011, attached hereto as Exhibit "B."

Because of the fact that there was no evidence against Cannady, and the character of the evidence, Cannady had bail set for only \$5,000.00. The Sheriff initially set bail for \$5,000.00 as shown by Exhibit "C," and a circuit court judge reaffirmed the bail in Order of July 9, 2012, attached hereto as Exhibit "D." Cannady was released from jail, having made the bail on approximately April 26, 2012.

Cannady was instructed, pursuant to practice occurring in Clay County, Mississippi to appear in Court from day to day and term to term. He appeared at the Clay County courthouse several times during July 2012, although he was never brought before a judge. He signed a Waiver of Arraignment and Entry of Plea of not guilty on July 9, 2012, attached hereto as Exhibit "E." The Court appointed counsel to represent Cannady, but, except for obtaining his signature on the Waiver of Arraignment, and did not inquire into the case.

An Order was entered setting the case for trial on October 10, 2012. See Exhibit "D." Cannady, however, being an uneducated person, thought it unnecessary to appear because he had been informed by law enforcement officers that his court-appointed counsel would take care of the matter. Having made several trips to West Point, Mississippi, with no action being taken, Cannady assumed the matter was not going to be pursued, just as it had not been pursued in Justice Court. Out of ignorance, Cannady did not appear in response to the Order.

Thereafter, on October 9, 2012, the day before the order directed him to appear, an order was

issued by Circuit Judge Lee S. Coleman, directing Cannady's arrest, and directing the Sheriff to bring Cannady to appear before him "instanter." See Exhibit "F."

Because of the official Clay County policy and procedure, and custom, Judge Coleman's Order to bring Cannady before him "instanter" was ignored. Cannady was not brought before a circuit judge, despite the court's order he be brought before the court "instanter."

Cannady, thereafter, began a pattern of writing letters to the circuit clerk, to the sheriff, to the judge and to members of the board of supervisors of Clay County, Mississippi maintaining his innocence and demanding a speedy trial. These letters were ignored until October 14, 2013 when the district attorney presented a Nolle Prosse to the circuit court. The Nolle Prosse order, attached hereto as Exhibit "G," falsely states that the case was being nolle prossed because "the State is unable to locate a material witness, Donnell Garrett." In fact, Garrett was in the Clay County Jail. The real reason for the dismissal was that the State had no credible evidence against Cannady.

Had Clay County followed the order of the circuit court, directing that Cannady be brought before the judge "instanter," the court could have inquired into the circumstances of Cannady's non-appearance, and into the circumstances of the charges, and either set an immediate trial, or order Cannady's release. Instead, Cannady remained continuously incarcerated despite his innocence for approximately one (1) year. This was in addition to the three months he was in jail when Clay County Justice Court kept Cannady incarcerated prior to the indictment.

The failure of the Sheriff of Clay County, Mississippi to honor the circuit court's order to bring Cannady before the judge instanter was a cause of Cannady's wrongful incarceration from October 30, 2012 to October 14, 2013.

Additionally, Cannady was entitled by the due process clauses of the Mississippi and United

States Constitutions to a hearing as to the reasons for his failure to appear in Circuit Court, and to not be incarcerated for one (1) year without any judicial inquiry into the reason for his non-appearance.

Cannady was denied his rights under United States and Mississippi Constitutions, to a speedy trial, and to a hearing as to the reasons for his non-appearance during term of Clay County Circuit Court. Instead, Cannady was wrongfully incarcerated for a period of one (1) year, in addition to several months of pre-trial incarceration.

Clay County is liable to Cannady under State law for false imprisonment, negligence and deprivation of liberty without due process of law, and arbitrary failure to follow a circuit court order.

EXTENT OF THE INJURY

Cannady's length of incarceration has caused him humiliation, embarrassment, and mental anxiety and stress.

TIME AND PLACE INJURY OCCURRED

The injury occurred at the Clay County Jail from October 30, 2012 until October 14, 2013.

NAMES OF PERSONS KNOWN TO BE INVOLVED

- 1. Jessie Anderson, West Point Police Department, 310 E. Westbrook Street, West Point, MS 39773, 662-494-1244.
- 2. Jimmy Birchfield, West Point Police Department, 310 E. Westbrook Street, West Point, MS 39773, 662-494-1244.
- Jimmy Farris, Pontotoc Police Department, 225 W. Reynolds Street, Pontotoc, MS 38863, 662-489-7804.
- Jaquelyn Salinas Palaco, Murphy Oil, Highway 45, West Point, Mississippi; 662-760-8876.
- 5. Donnell Garrett, Clay County Jail, West Point, MS.

- 6. Robert Harrell, Jr., Clay County Circuit Clerk, PO Box 364, West Point, MS 39773, 662-494-3384.
- Circuit Judge Lee S. Coleman, P O Drawer 1033, West Point, MS 39773, 662-494-4893.
- 8. Eddie Scott, Clay County Sheriff, P O Box 142, West Point, MS 39773, 662-494-5154.
- Mark Cliett, Attorney, P O Box 1463, West Point, MS 39773, 662-494-4999.
- 10. Forrest Allgood, District Attorney, 220 N. 5th Street, Columbus, MS 662-329-5911.
- 11. Austin Vollor, Vollor Law Firm, P O Box 80120, Starkville, MS 662-323-0083.

TOTAL AMOUNT OF DAMAGES SOUGHT RESIDENCE OF CLAIMANT AT THE TIME OF THE INJURY AND AT THE TIME OF FILING THE NOTICE

Cannady seeks damages in the amount of \$_\(\frac{201660}{}\)

Respectfully submitted, this the 10 day of way, 2014.

Respectfully submitted,

WAIDE & ASSOCIATES, P.A.

BY: ___

JIM WAIDE

MS BLAR NO.: 6857

WAIDE & ASSOCIATES, P.A. ATTORNEYS AT LAW POST OFFICE BOX 1357 TUPELO, MISSISSIPPI 38802 662-842-7324 TELEPHONE 662-842-8056 FACSIMILE EMAIL: waide@waidelaw.com

ATTORNEYS FOR CLAIMANT

Case: 13Cl1:11-cr-09601 Document #: 2 Filed: 10/10/2011 Page 5 of 37

STATE OF MISSISSIPPI COUNTY OF CLAY CITY OF WEST POINT

AFFIDAVIT

Before me the undersigned Deputy Municipal Court Clerk of said City, Sgt. Det. Jimmy Birchfield, makes affidavit that Calvin Cannady,

on or about the 11 day of March, 2011, in the County aforesaid, in said City did willfully and unlawfully ,feloniously and burglariously break and enter Murphy Oil USA Hwy 45 South in West Point taken larg amount of cartons of cigarettes valued at \$2000 property of Murphy Oil with the intent to steal at Muphy Oil USA Hwy 45 Soth West Point Ms. . Said offense having occurred within the Corporate limit of the City of West Point, County of Clay, State of Mississippi. In violation of (97-17-33), Mississippi Code Annotated of 1972, as amended.

contrary to the form of the Statute in such cases made and provided, and against the Peace and Dignity of the State of Mississippi.

Sworn to and subscribed before me, this

West Point, Clay County, Mississippi

Com

letur to minimipal

EXHIBIT

Case: 13Cl1:11-cr-09601 Document #: 1 Filed BURGLARY AND LARCENY OF A BUSINESS (§97	l: 10/±0/2011 Page 1 of 1 7-17-33) 1 Count
THE STATE OF MISSISSIPPI	CIRCUIT COURT
CLAY COUNTY	NO. 940
OCTOBER TERM	, 2011
THE GRAND JURORS of the State of Mississip lawful men and women of said County, duly elected, er aforesaid of the Court aforesaid, to inquire in and for name and by the authority of the State of Mississippi, up	mpanelled, sworn and charged, at the Term the body of the County aforesaid, in the
CALVIN CANN	ADY
late of the County aforesaid, on or about the 8th day of aforesaid, did unlawfully, willfully, feloniously, and building, to-wit: Murphy Oil, in which building there equipment or some valuable thing kept for use, sale, of unlawfully, willfully, feloniously and burglariously steament and burglariously take, steal, and carry away the proper	burglariously break and enter a certain were then and there goods, merchandise, leposit, or transportation, with the intent to al, and did willfully, unlawfully, feloniously
cartons of cigarettes;	
having a total and aggregate value in excess of \$500 such cases made and provided, and against the peace at	
DISTRICT ATTORNEY FO	REMAN OF THE GRAND JURY
Filed	Robert D Honeld Clerk
Recorded day off ODD	Jayns D.C.
: 5027 Carrier Carrier	
EXHIBIT	

Case: 13Cl1:11-cr-09601 Document #: APPEARANCE BOND CIRCUIT COURT	2 Filed: 10/10/2011 Page 19 of 37
THE STATE OF MISSISSIPPI CLAY COUNTY	CASE NO. <u>9601</u>
	Williams and Ace Surety Bail Bonding Sureties, Dollars, unless the said <u>Calvin Cannady</u> shall
-	CLAY County, and there remain from day to day
and term to term until discharged by law to answer t	
	Sharon Wilkiams Streety Boil Bondo Surety Boil Bondo
Approved: EDdie Scuff Skieriff	<u>-</u>
•	
THE STATE OF MISSISSIPPI,	
<u>CLAY</u> County	
Personally appeared before me, EDDIE SCO	OTT Sheriff of said county, the above named
Calvin Cannady_sureties on the above bond, who	severally make oath, the said Sherry Williams and
Ace Surety Bail Bonding that she is worth the sum	
just and legal exemptions in property subject to lev	
	Sharon Welliams) ace Surety Sail Sonds) Surety
Sworn to and subscribed before me, this 26th day	of <u>April</u> ,2012
•	Sheriff
	FILED Clay County
,	MAY 1 0 2012 FILED Clay County
EXHIBIT	Robert D House on MAY 0.9 2012
ž V	Rose D House

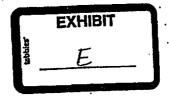
1-21
Case: 13Cl1:11-cr-09601 Document #: 2 Filed: 10/10/2011 Page 31 of 37
IN THE CIRCUIT COURT OF <u>CLAY</u> COUNTY, MISSISSIPPI
STATE OF MISSISSIPPI
VERSUS NO: 9101 C
Calun Cannadu
Buralani Bushess
ORDER
The above named Defendant, together with counsel, <u>Ueff. Hostwa</u> , having
waived the arraignment and reading of the indictment and entered a plea of not guilty to said charge, it is hereby
ORDERED:
1. The Defendant is remanded to the custody of the Sheriff unless lawful approved bond is posted in
the amount of 5000, cf
2. If discovery is required by the defendant, the request shall be made no later than
August 1, 2012 , and completed thirty days from the date thereof. Pretrial motions shall be filed and noticed
to the Court Administrator no later than September 10, 2012 , the failure of which shall be abandonment
of said motions pursuant to Rule 9.04.
3. Final written plea agreements shall be filed no later than five days prior to the next term of Court,
with the entry of plea to be on October 1, 2012
4. The Defendant's trial is set on OCA 10 2012 at 9:00 a.m.
5. The Defendant acknowledges that his failure to appear on the above trial date, or for any subsequent
trial setting, may result in the Defendant being tried in his absence.
SO ORDERED, this the 91 day of July 20 17.
(pures of Etchouse
CIRCUIT JUDGE
AGREED: Agreed
macay Almono District Attorney EXHIBIT County
Defendant's Attorney 2 3 JUL 0 9 2012
Defendant Defendant
140/1910

Case: 13Cl1:11-cr-09601 Document #: 2 Filed: 10/19/2011 Page 26 of 37

IN THE CIRCUIT OF CLAY COUNTY, MISSISSIPPI SIXTEENTH CIRCUIT COURT DISTRICT

	•
STATE OF MISSISSIPPI Vs.	NO. 9601
Calvin Canady	
WAIVER OF ARRAIGNMENT AND ENTR	Y OF PLEA
COMES NOW THE DEFENDANT, Chin	Cenned, IN
OPEN COURT AND ACKNOWLEDGES SERVICE OF A C	COPY OF THE
INDICTMENT ON A CHARGE OF Buy ho	inta Business
AND FOR PLEA TO SAID CHARGES, SAID DEFENDAN	T SAYS THAT (HE/SHE)
OFFERS A PLEA OF NOT GUILTY.	
WITNESS MY SIGNATURE, this the day	of J.
20_/)	7.
11/1 Coli (an X
DEFENDANT	
ATTORNE FOR DEFENDANT	
V = I.	•

BOND RECOMMENDATION



Case: 13Cl1:11-cr-09601

Document #: 4

Filed: 07/16/2012

Page 12 of 29

BENCH WARRANT

THE STATE OF MISSISSIPPI

CAUSE NO.: 9601C

TO THE SHERIFF OR ANY OTHER LAWFUL OFFICER OF CLAY COUNTY, MISSISSIPPI – GREETING:

WE COMMAND YOU, as we have done heretofore, to take the body of
Calvin Canady if to be found in your County, and
him/her safely keep, so you have his/her body before the Judge of our Circuit Court of the County of
Clay, at the County Courthouse in the City of West Point, Mississippi instanter then and there to
answer to the State of Mississippi why he/she failed to appear on his/her appearance bond filed in the
above styled and numbered cause and answer to the State of Mississippi, on a charge of:
Burglary and Larceny of a Business
HEREIN FAIL NOT, and have you then and there this Warrant. This the
CIRCUIT COURT JUDGE

EXHIBIT

FILED Clay

DCT 0 9 2012

Robert D Hames &

141/209

Case: 13Cl1:11-cr-09601 Document #: 10 Filed: 10/14/2013 Page 1 of 1
IN THE CIRCUIT COUNTY OF CLAY COUNTY, MISSISSIPPI
() cfo har TERM, 201)
UCP GOV TEACH, 201
STATE OF MISSISSIPPI CAUSE NO: 11-9601
vs.
Calvin Cannedy
NOLLE PROSSE
NOLAK-PROMITE
This day came on to be heard the within styled and numbered cause on Motion of the State
This day canno on to the first
of Mississippi to Nolle Prosse the above styled and numbered cause based upon the first
that The total without said without
Dunelli Garret, and count meet the burden without said without Dunelli Garret, and count meet the burden in well-taken and the above
The Court having duly considered same finds that said Motion is well-taken and the above
The Court having only considered same
styled and numbered cause is hereby Nolle Prossed without prejudice.
styled and minimizer transfer to the styled and st
the S. Obenow
CIRCUIT COURT JUDGE
·
nux.
·
EH ED CHAY EXHIBIT
oct 14 200 G
Rout D Hondon by
144/268

WAIDE & ASSOCIATES, P.A. ATTORNEYS AND COUNSELORS AT LAW

JIM WAIDE LUTHER C. FISHER, IV RON L. WOODRUFF MAILING ADDRESS:
POST OFFICE BOX 1357
TUPELO, MISSISSIPPI 38802-1357
TELEPHONE: 662.842.7324
FACSIMILE: 662.842.8056
EMAIL: waide@waidelaw.com

STREET ADDRESS: 332 NORTH SPRING STREET TUPELO, MISSISSIPPI 38804-1357

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Amy Berry Clay County Chancery Clerk P. O. Box 815 West Point, MS 39773

Lynn Horton Clay County Board of Supervisors P. O. Box 815 West Point, MS 39773

Luke Lummus
Clay County Board of Supervisors
P. O. Box 815
West Point, MS 39773

R. B. Davis Clay County Board of Supervisors P. O. Box 815 West Point, MS 39773

Shelton L. Deanes Clay County Board of Supervisors P. O. Box 815 West Point, MS 39773 Notice of Claim Page Two

Floyd T. McKee Clay County Board of Supervisors P. O. Box 815 West Point, MS 39773

Mr. Eddie Scott Sheriff of Clay County P. O. Box 142 West Point, MS 39773

RE: Calvin Cannady Notice of Claim

Dear Ms. Berry, Board of Supervisors and Sheriff Scott:

Please find enclosed herein a Notice of Claim on behalf of Calvin Cannady

With kindest regards, I am

Sincerely yours,

Jim Waide IPN

JIM WAIDE

JDW/pbn Enclosure

cc: Calvin Cannady

HD Doc #: 1 Filed: 03/06/15 20 of 21 Pag 39730 UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF MISSISSIPPI FEB 2 V 23.3 RECEIVE . 39203

SECTION SECTIO IN THE STOR CAN THE 39730282001 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI RECEIVED MAR - 6 2015